

TO: Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Northern District of California on the following ☐ Patents or ☒ Trademarks:

DOCKET NO. C-08-4504-BZ	DATE FILED September 25, 2008	U.S. DISTRICT COURT Office of the Clerk, 450 Golden Gate Ave., 16 th Floor, San Francisco, CA 94102	
PLAINTIFF FLOWMASTER, INC.		DEFENDANT RPM OUTLET, INC.	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1 1668429			
2 2217181			
3		"Pls. See Attached Copy of Complaint".	
4			
5 77534260 ^{#3}			

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY	<input type="checkbox"/> Amendment	<input type="checkbox"/> Answer	<input type="checkbox"/> Cross Bill	<input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK			
1					
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT		
CLERK Richard W. Wiekling	(BY) DEPUTY CLERK Thelma Nudo	DATE September 25, 2008

Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

COPY

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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e-Filing

12 Attorneys for Plaintiff
13 Flowmaster, Inc.

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 FLOWMASTER, INC., a Nevada
17 corporation,

18 Plaintiff,

19 vs.

20 RPM Outlet, Inc., a Texas corporation,

21 Defendants.

C 08 4504BZ

Case No.

**COMPLAINT FOR TRADEMARK
INFRINGEMENT; FALSE
ADVERTISING; UNFAIR COMPETITION
AND REQUEST FOR PRELIMINARY
AND PERMANENT INJUNCTIVE RELIEF**

BY FAX

1 Plaintiff Flowmaster, Inc. ("Flowmaster") alleges as follows:

2 1. This action is brought against defendant RPM Outlet, Inc. for trademark
3 infringement, false designation of origin, unfair business practices, and deceptive advertising in
4 violation of the Lanham Act, 15 U.S.C. §§ 1141(1) and 1125, California Business and
5 Professions Code §§ 17200 *et seq.*, 17500 *et seq.* and 14335, and common law, arising from RPM
6 Outlets' use of designations that are likely to cause confusion with Flowmaster's federally
7 registered FLOWMASTER® trademarks, its FLOWMASTER Logo and its FLOWMASTER
8 trade name (collectively the "FLOWMASTER Marks").

9 **PARTIES**

10 2. Flowmaster, Inc. is a Nevada corporation, with its principal place of business at
11 100 Stony Point Rd., Suite 125, Santa Rosa, California 95401. Flowmaster is a leading
12 manufacturer of aftermarket automotive exhaust products, including mufflers, exhaust kits and
13 related accessories. Flowmaster sells these products under its federally registered
14 FLOWMASTER Marks.

15 3. Flowmaster is informed and believes, and on that basis alleges, that RPM Outlet,
16 Inc. ("RPM Outlet") is a Texas corporation, with its principal place of business at 11821 S. Sam
17 Houston Pkwy W., Houston, TX 77031-2360. Flowmaster is informed and believes, and on that
18 basis alleges, that RPM Outlet does business under the name RPM Outlet.com, and operates the
19 web site rpmoutlet.com, at which aftermarket automotive products, including muffler and exhaust
20 products, are offered for sale and are sold across the country, including to residents in the State of
21 California.

22 **JURISDICTION AND VENUE**

23 4. This complaint arises under the Lanham Act, 15 U.S.C. §1121, for trademark
24 infringement, false advertising and unfair competition; and California statutory and common law.
25 This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. §1121 and 28
26 U.S.C. §§1331, 1338(a)-(b), and 1367(a).

27 5. This Court has personal jurisdiction over the RPM Outlet, and venue is proper in
28 this district pursuant to 28 U.S.C. § 1391 (b)-(c), because on information and belief RPM Outlet

1 conducts regular and systematic business in California, has purposefully availed itself of
2 conducting business in California, and/or the events giving rise to the claims alleged in this
3 complaint have a substantial effect in California and a substantial part of such events occurred in
4 this district. In this regard, Flowmaster is informed and believes, and on that basis alleges that
5 RPM Outlet markets, advertises, promotes, offers for sale and has substantial sales of its
6 aftermarket automotive products in California. Indeed, RPM Outlet affirmatively represents on
7 its web site that "some of these products and systems are only legal in California....if used
8 exclusively for racing wheels....." Further, RPM Outlet advises that it is "required to collect
9 applicable sales tax on S & B orders for CA customers...."

10 FACTUAL ALLEGATIONS

11 Flowmaster's Rights in Its FLOWMASTER Marks

12 6. Flowmaster has designed and manufactured high quality after market automotive
13 exhaust products under its FLOWMASTER Marks for at least twenty-four years. Flowmaster has
14 continuously manufactured, promoted, distributed and sold after market automotive exhaust
15 products under its FLOWMASTER marks since at least 1984. During this time, Flowmaster has
16 successfully grown and expanded its well-known FLOWMASTER Marks for Flowmaster's
17 mufflers, exhaust kits, automobile accessories and other products and services.

18 7. Furthermore, Flowmaster has used its distinctive FLOWMASTER Logo, shown
19 below, in connection with its high quality after market automotive exhaust products for at least
20 fifteen years. As a result, Flowmaster's logo is widely recognized by the purchasing public.

21 ***FLOWMASTER***^{sm.}
22
23

24 8. Flowmaster has extensively marketed, advertised, promoted and sold mufflers and
25 exhaust parts under the FLOWMASTER Marks throughout the United States. Flowmaster has
26 sold, and continues to sell, its mufflers, exhaust kits and related products using its
27 FLOWMASTER Marks through authorized dealers across the country that sell auto parts and
28 accessories. Flowmaster also owns and uses the "flowmastermufflers.com" domain name for a

1 web site that promotes its muffler, exhaust parts and related products. This web site prominently
2 features and promotes the FLOWMASTER Marks, provides information about its
3 FLOWMASTER products, and sells products to consumers.

4 9. As a result of Flowmaster's longstanding, extensive and widespread use,
5 marketing and promotion of its FLOWMASTER Marks, the FLOWMASTER Marks are widely
6 recognized by the general consuming public as a designation of source for Flowmaster's high
7 quality mufflers and exhaust products.

8 10. Flowmaster is the exclusive owner of federal registrations and applications for
9 FLOWMASTER, including, but not limited to, the following:

- 10 (a) FLOWMASTER® (Reg. No. 1668429), filed December 17, 1990 for "exhaust
11 system components for land vehicles; namely, mufflers, components of mufflers,
12 tail pipes, and headers" in International Class 12;
- 12 (b) FLOWMASTER® (Reg. No. 2217181), filed October 10, 1997 for "posters and
13 catalogs in the field of automotive racing" in International Class 16 and "clothing,
14 namely, shirts and pants" in International Class 25;
- 14 (c) FLOWMASTER EXHAUST EXPERT (App. No. 77351791) for "posters;
15 informational sheets about mufflers and muffler installation" in International Class
16 16, "Hats; Shirts; Sweat shirts; T-shirts" in International Class 25 and "educational
17 services, namely, conducting programs in the field of sales and installation of
18 automobile exhaust products" in International Class 41;
- 17 (d) FLOWMASTER INC. and Design (App. No. 77534204), for "internal combustion
18 engine exhaust system components, namely, mufflers, muffler parts, collectors, tail
19 pipes, and header pipes" in International Class 7, "posters" in International Class
20 16 and "shirts, t-shirts and caps" in International Class 25; and
- 20 (e) FLOWMASTER INC. and Design (App. No. 77534260), for "internal combustion
21 engine exhaust system components, namely, mufflers, muffler parts, collectors, tail
22 pipes, and header pipes" in International Class 7, "posters" in International Class
23 16 and "shirts, t-shirts and caps" in International Class 25.

22 11. Flowmaster's registrations for its FLOWMASTER Marks provide constructive
23 notice of Flowmaster's claim of ownership under 15 U.S.C. § 1072.

24 12. Flowmaster's federal registrations for FLOWMASTER® (Reg. Nos. 1668429 and
25 2217181) are incontestable pursuant to 15 U.S.C. § 1065, and thus provide conclusive evidence
26 of Flowmaster's exclusive right to use the marks covered by the registrations in commerce in
27 connection with the goods specified in the registrations.

RPM Outlets' Unauthorized Use of the Confusingly Similar FLOMASTER Designation

13. Flowmaster is informed and believes, and on that basis alleges, that RPM Outlet is using the confusingly similar FLOMASTER designation, including in a virtually similar stylization as used by Flowmaster, for promoting, marketing and selling mufflers that are directly competitive with the products long offered under the FLOWMASTER Marks. See true and correct print-out from rpmoutlet.com, attached as Exhibit A. RPM Outlet's use of a designation that sounds identical to, looks identical to and has the same meaning as Flowmaster's federally registered marks creates a likelihood of confusing the public.

14. Flowmaster is informed and believes, and on that basis alleges, that RPM Outlet is using the FLOMASTER designation in the same distinctive font used by Flowmaster in its FLOWMASTER Logo for promoting, marketing and selling mufflers that are directly competitive with the Flowmaster's muffler products.

15. Flowmaster is informed and believes, and on that basis alleges, that RPM Outlet further markets promotes and sells mufflers under the FLOMASTER designation by falsely stating that its mufflers are "built just like a flowmaster" and "[s]ounds just like a flowmaster."

16. Flowmaster has not authorized RPM Outlet to use its FLOWMASTER Marks or the confusingly similar FLOMASTER designation for any muffler or to otherwise use or promote RPM Outlet's products. Flowmaster has not consented to or authorized RPM Outlet to use the FLOMASTER designation in any format.

17. For many years before RPM Outlet commenced use of the confusingly similar FLOMASTER designation, Flowmaster extensively used, promoted and marketed its FLOWMASTER Marks for mufflers, exhaust kits and other automobile accessories.

18. Flowmaster's FLOWMASTER® Marks were federally registered long before RPM Outlet began using its confusingly similar FLOMASTER designation.

RPM Outlet's Unlawful Conduct Is Willful and Intentional

19. RPM Outlet knew, or should have known, of Flowmaster's well-established and prior rights and/or federal registrations for Flowmaster's FLOWMASTER Marks for mufflers and other products before RPM Outlet adopted and began using the confusingly similar

1 FLOMASTER designation for its competitive products.

2 20. Upon information and belief, RPM Outlet's use of the confusingly similar
3 FLOMASTER designation in a style and font that is confusingly similar to Flowmaster's logo,
4 along with false and misleading statements that its mufflers are "built just like a flowmaster,"
5 confirms that the infringement of Flowmaster's Marks was deliberate.

6 21. RPM Outlet has continued to use the infringing FLOMASTER designation
7 notwithstanding RPM Outlet's actual knowledge of Flowmaster's prior and exclusive rights to its
8 FLOWMASTER Marks, and despite Flowmaster providing RPM Outlet with written notice of its
9 objections to RPM Outlets' unlawful use of the confusingly similar FLOMASTER designation
10 and Flowmaster's demand that RPM Outlet cease the illegal conduct alleged in this complaint.

11 22. RPM Outlet has continued to make false statements on its web site that its mufflers
12 are "built just like a flowmaster" and "[s]ounds just like a flowmaster," despite Flowmaster
13 providing RPM Outlet with written notice of its objections to RPM Outlets' use of these false and
14 misleading statements in its advertising.

15 23. Upon information and belief, RPM Outlet's unlawful conduct is and continues to
16 be knowing, deliberate and willful.

17 24. RPM Outlet's conduct is continuing and will continue unless restrained by the
18 Court.

19 25. As a direct and proximate result of RPM Outlet's conduct set forth above,
20 Flowmaster has suffered, and will continue to suffer, irreparable injury to its FLOWMASTER
21 Marks and to the goodwill and business reputation associated with its FLOWMASTER Marks.

22 26. Unless RPM Outlet is enjoined and restrained by this Court from engaging in the
23 unlawful conduct described above, Flowmaster will suffer irreparable injury.

24 **FIRST CLAIM FOR RELIEF**
25 **(TRADEMARK INFRINGEMENT – 15 U.S.C. § 1114(1))**

26 27. Flowmaster incorporates by reference and realleges as though fully set forth herein
27 the allegations of paragraphs 1 through 26, inclusive.

28 28. The above acts of RPM Outlet constitute trademark infringement of Flowmaster's

1 FLOWMASTER Marks, including, but not limited to, those federally registered marks identified
2 above in violation of section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

3 29. RPM Outlet has used and continues to use a reproduction, counterfeit, copy, or
4 colorable imitation of the FLOWMASTER Marks in connection with the sale, offering for sale,
5 distribution, or advertising of mufflers that have not been authorized by Flowmaster.

6 30. RPM Outlet has reproduced, counterfeited, copied, or colorably imitated the
7 federally registered FLOWMASTER Marks and has applied such reproduction, counterfeit, copy,
8 or colorable imitation to advertisements intended to be used in commerce in connection with the
9 sale, offering for sale, distribution, or advertising of its products without Flowmaster's consent.

10 31. RPM Outlet's infringing activities are likely to cause confusion, mistake and
11 deception among the general consuming public and trade as to the origin and quality of RPM
12 Outlet's products.

13 32. RPM Outlet's unlawful conduct has been knowing, deliberate and willful.

14 33. RPM Outlet has been and is likely to continue to be unjustly enriched by its
15 infringing conduct.

16 34. As a direct and proximate result of RPM Outlet's unlawful conduct, Flowmaster
17 has been, and will continue to be, irreparably harmed, injured and/or damaged by RPM Outlet's
18 wrongful acts, and such harm, injury and/or damage will continue unless RPM Outlet's conduct is
19 enjoined by the Court.

20 **SECOND CLAIM FOR RELIEF**
21 **(FALSE DESIGNATION OF ORIGIN – 15 U.S.C. § 1125(a)(1))**

22 35. Flowmaster incorporates by reference and realleges as though fully set forth herein
23 the allegations of paragraphs 1 through 34, inclusive.

24 36. The above acts of RPM Outlet constitute false designation of origin in violation of
25 section 43(a)(1) of the Lanham Act, 15 U.S.C. § 1125(a)(1).

26 37. The above acts of RPM Outlet are likely to cause confusion, or to cause mistake,
27 or to deceive as to the affiliation, connection, or association of RPM Outlet or RPM Outlet's
28 goods or commercial activities with Flowmaster or Flowmaster's goods or commercial activities,

1 and/or as to the origin, sponsorship, or approval of RPM Outlet's goods or commercial activities
2 by Flowmaster.

3 38. RPM Outlet has competed unfairly and continues to compete unfairly with
4 Flowmaster.

5 39. RPM Outlet's unlawful conduct has been knowing, deliberate and willful.

6 40. RPM Outlet has been and is likely to continue to be unjustly enriched by its
7 unlawful conduct.

8 41. As a direct and proximate result of RPM Outlet's unlawful conduct, Flowmaster
9 has been, and will continue to be, harmed, injured and/or damaged by RPM Outlet's wrongful
10 acts, and such harm, injury and/or damage will continue unless RPM Outlet's conduct is enjoined
11 by the Court.

12 **THIRD CLAIM FOR RELIEF**
13 **(UNFAIR COMPETITION — 15 U.S.C. § 1125)**

14 42. Flowmaster repeats and realleges all of the allegations contained in paragraphs 1 to
15 41 above as though the same were fully alleged herein.

16 43. Flowmaster is informed and believes, and on that basis alleges, that RPM Outlet is
17 unlawfully competing with Flowmaster by making false statements that RPM Outlet's mufflers
18 are "built just like a flowmaster" and "[s]ounds just like a flowmaster" in its promotion and sale
19 of mufflers, which falsely leads consumers to believe that RPM Outlet is offering a line of
20 muffler product that has the same quality as FLOWMASTER's products.

21 44. RPM Outlet's false and/or misleading statements actually deceived or have the
22 tendency to deceive a substantial segment of the consuming public.

23 45. RPM Outlet's deception is material, in that it is likely to influence the purchasing
24 decisions of the consuming public.

25 46. RPM Outlet has caused its false and/or misleading statements to be made in
26 interstate commerce.

27 47. RPM Outlet's conduct in the distribution, promotion and/or sale of its muffler
28 products constitutes unfair competition in violation of 15 U.S.C. § 1125.

1 48. FLOWMASTER is informed and believes, and on that basis alleges, that RPM
2 Outlet's actions were done with full knowledge of the unfair competition, and with the express
3 intent to cause confusion and to mislead and deceive the purchasing public.

4 49. Flowmaster has no adequate remedy at law. RPM Outlet's conduct, as described
5 herein, has caused and, if not enjoined, will continue to cause irreparable damage to Flowmaster.
6 As a result of RPM Outlet's conduct, Flowmaster is entitled to injunctive relief, damages and
7 attorney fees.

8 **FOURTH CLAIM FOR RELIEF**
9 **(UNFAIR BUSINESS PRACTICES – CAL. BUS. & PROF. CODE §§ 17200 *ET SEQ.*)**

10 50. Flowmaster incorporates by reference and realleges as though fully set forth herein
11 the allegations of paragraphs 1 through 49, inclusive.

12 51. The above acts and practices of RPM Outlet are likely to mislead the general
13 public and, thereby, constitute unfair and fraudulent business practices and unfair, deceptive,
14 untrue and misleading advertising in violation of California Business and Professions Code §§
15 17200 *et seq.* RPM Outlet's unlawful conduct caused injury to Flowmaster resulting in loss of
16 money or property and caused injury in fact to Flowmaster resulting in loss of money or property.

17 52. Flowmaster is entitled to relief against RPM Outlet, including full restitution
18 and/or disgorgement of all profits and benefits that may have been obtained by RPM Outlet as a
19 result of such unfair, deceptive and/or fraudulent business practices and unfair, deceptive, untrue
20 and misleading advertising.

21 53. As a direct and proximate result of RPM Outlet's unlawful conduct, Flowmaster
22 has been, and will continue to be, harmed, injured and/or damaged by RPM Outlet's wrongful
23 acts, and such harm, injury and/or damage will continue unless RPM Outlet's conduct is enjoined
24 by the Court.

25 **FIFTH CLAIM FOR RELIEF**
26 **(DECEPTIVE, FALSE AND MISLEADING ADVERTISING – CAL. BUS. & PROF.
CODE §§ 17500 *ET SEQ.*)**

27 54. Flowmaster incorporates by reference and realleges as though fully set forth herein
28 the allegations of paragraphs 1 through 53, inclusive.

1 55. Flowmaster is informed and believes, and on that basis alleges that, RPM Outlet
2 intentionally or negligently committed the above acts with an intent to directly or indirectly
3 dispose of RPM Outlet's products.

4 56. The above acts of RPM Outlet constitute untrue and misleading advertising as
5 defined by California Business & Professions Code § 17500 *et seq.*

6 57. Flowmaster is entitled to relief against RPM Outlet, including full restitution
7 and/or disgorgement of all profits and benefits that may have been obtained by RPM Outlet as a
8 result of such untrue and misleading advertising. RPM Outlet's unlawful conduct caused injury
9 to Flowmaster resulting in loss of money or property and caused injury in fact to Flowmaster
10 resulting in loss of money or property.

11 58. As a direct and proximate result of RPM Outlets' unlawful conduct, Flowmaster
12 has been, and will continue to be, harmed, injured and/or damaged by RPM Outlets' wrongful
13 acts, and such harm, injury and/or damage will continue unless RPM Outlets' conduct is enjoined
14 by the Court.

15 **SIXTH CLAIM FOR RELIEF**
16 **(TRADEMARK INFRINGEMENT – CAL. BUS. & PROF. CODE §14245)**

17 59. Flowmaster incorporates by reference and realleges as though fully set forth herein
18 the allegations of paragraphs 1 through 58, inclusive.

19 60. Flowmaster is informed and believes, and on that basis alleges that, RPM Outlet
20 has used, and continues to use, the confusingly similar FLOMASTER designation for RPM
21 Outlet's products for the purpose of enhancing the commercial value of, or selling or soliciting
22 purchases of, RPM Outlet's products.

23 61. As a direct and proximate result of RPM Outlet's unlawful conduct, Flowmaster
24 has been, and will continue to be, harmed, injured and/or damaged by RPM Outlet's wrongful
25 acts, and such harm, injury and/or damage will continue unless RPM Outlet's conduct is enjoined
26 by the Court.

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1 **SEVENTH CLAIM FOR RELIEF**
2 **(COMMON LAW UNFAIR COMPETITION)**

3 62. Flowmaster incorporates by reference and realleges as though fully set forth herein
4 the allegations of paragraphs 1 through 61, inclusive.

5 63. In addition to its rights under the Lanham Act and state statutory law, Flowmaster
6 also has valid and existing common law rights with respect to its FLOWMASTER Marks.

7 64. The above acts of RPM Outlet constitute unfair competition under common law.

8 65. Flowmaster is informed and believes, and on that basis alleges that, the above acts
9 of RPM Outlet were and continue to be willful and malicious and undertaken with the deliberate
10 intent to injure the business of Flowmaster and so as to improve RPM Outlet's business.
11 Flowmaster, therefore, is entitled to exemplary damages based upon common law unfair
12 competition principles.

13 66. As a direct and proximate result of RPM Outlet's unlawful conduct, Flowmaster
14 has been, and will continue to be, harmed, injured and/or damaged by RPM Outlet's wrongful
15 acts, and such harm, injury and/or damage will continue unless RPM Outlet's conduct is enjoined
16 by the Court.

17 67. Flowmaster is entitled to relief against RPM Outlet, including full restitution
18 and/or disgorgement of all profits and benefits that may have been obtained by RPM Outlet as a
19 result of such unfair competition.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Flowmaster prays the Court for the following relief:

22 1. That the Court issue a preliminary injunction, pending trial of this action,
23 enjoining RPM Outlet, its successors, officers, agents and employees, and anyone acting in
24 concert with or at the behest or direction of RPM Outlet, from using the FLOWMASTER
25 designation.

26 2. That the Court issue a preliminary injunction, pending trial of this action,
27 enjoining RPM Outlet, its successors, officers, agents and employees, and anyone acting in
28 concert with or at the behest or direction of RPM Outlet, from making false statements that its

1 mufflers are "built just like a flowmaster" and/or "[s]ounds just like a flowmaster."

2 3. That following trial of this action, the Court enter final judgment as follows:

3 a. permanently enjoining RPM Outlet, its successors, officers, agents and
4 employees, and anyone acting in concert with or at the behest or direction of RPM Outlet, from
5 using the FLOMASTER designation;

6 b. permanently enjoining RPM Outlet, its successors, officers, agents and
7 employees, and anyone acting in concert with or at the behest or direction of RPM Outlet, from
8 making false statements that its mufflers are "built just like a flowmaster" and/or "[s]ounds just
9 like a flowmaster."

10 c. ordering that all advertising, marketing, or other promotional materials
11 bearing the FLOMASTER designation be destroyed, along with the means for making the same,
12 and that all Internet web sites, online advertising, marketing, promotions or other online materials
13 bearing the FLOMASTER designation be removed permanently;

14 d. ordering that all advertising, marketing, or other promotional materials
15 containing false statements that its mufflers are "built just like a flowmaster" and/or "[s]ounds
16 just like a flowmaster" be destroyed, along with the means for making the same, and that all
17 Internet web sites, online advertising, marketing, promotions or other online materials containing
18 false statements that its mufflers are "built just like a flowmaster" and/or "[s]ounds just like a
19 flowmaster" be removed permanently;

20 e. permanently enjoining RPM Outlet, its successors, officers, agents and
21 employees, and anyone acting in concert with or at the behest or direction of RPM Outlets, from
22 seeking to register the FLOMASTER designation;

23 f. ordering RPM Outlet to file with the Court and serve on Flowmaster's
24 counsel within 30 days after service of the injunction, a written report, sworn under oath, setting
25 forth in detail the manner and form in which RPM Outlet has complied with the injunction;

26 g. declaring that RPM Outlet's unauthorized use of the FLOMASTER
27 designation infringes the FLOWMASTER Marks;

28 h. declaring that RPM Outlet's infringement was knowing, intentional, and

1 willful;

2 i. declaring that RPM Outlet's false statements that its mufflers are "built just
3 like a flowmaster" and/or "[s]ounds just like a flowmaster" constitutes false advertising and
4 unfair competition;

5 j. declaring that RPM Outlet's acts of false advertising and unfair
6 competition were knowing, intentional, and willful;

7 k. awarding Flowmaster compensation for any all damages, injury or harm
8 incurred as a result of RPM Outlet's unlawful conduct;

9 l. ordering full restitution and/or disgorgement of all profits and benefits that
10 may have been obtained by RPM Outlet as a result of its wrongful conduct;

11 m. awarding Flowmaster treble damages resulting from RPM Outlet's willful
12 and intentional conduct;

13 n. awarding Flowmaster punitive and exemplary damages;

14 o. assessing Flowmaster's costs of this action and Flowmaster's attorneys'
15 fees against RPM Outlet; and,

16 p. ordering or awarding any other such relief the Court deems just and
17 proper.

18
19 Dated: September 25, 2008

MORGAN, LEWIS & BOCKIUS LLP

20
21 By 

22 Diane J. Mason

23 Attorneys for Plaintiff Flowmaster, Inc.
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